INDEX

CITATIONS

761868—47——1

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 328

ADAMSTON FLAT GLASS COMPANY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 130–150) is reported in 7 T. C. 493. The opinion of the Circuit Court of Appeals (R. 152–166) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 5, 1947. (R. 166.) The petition for a writ of certiorari was filed on September 5, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer-corporation is entitled under Sections 113 and 114 of the Internal Revenue Code to use the Clarksburg Glass Company's basis for depreciation with respect to properties which formerly belonged to that company and which were thereafter sold to the taxpayer by Pittsburgh Plate Glass Company in 1926. The answer depends upon whether there was a "reorganization" of Clarksburg Glass Company within the meaning of Section 203 (h) of the Revenue Act of 1926, and whether, if there was a reorganization, a 50 percent interest or control in such property remained in the same persons or any of them, as required by Section 113 (a) (7) (A) of the Code.

STATUTES AND REGULATIONS INVOLVED

These appear in the Appendix, *infra*, pp. 21–25.

STATEMENT

The findings of the Tax Court are extensive and are set out in full at pages 131–145 of the record. For present purposes, the facts may be abridged, as follows:

On June 18, 1926, the taxpayer was incorporated under the laws of West Virginia. (R. 131.)

During the year 1924 the Clarksburg Glass Company (hereinafter sometimes called Clarksburg Company), a West Virginia corporation of Clarksburg, West Virginia, was in need of additional funds with which to finance its opera-

tions, which had been unsuccessful for several years. On August 27, 1924, that company entered into an agreement with the Pittsburgh Plate Glass Company (hereinafter sometimes called Pittsburgh Company), whereby the Pittsburgh Company agreed to advance to Clarksburg Company the sum of $70,000 to be used to pay its current notes and account, and also agreed to advance further sums at its discretion from time to time in the aggregate amount of not to exceed $100,000. By the agreement of August 27, 1924, and in consideration of the financial and operating assistance rendered, the Pittsburgh Company became actively interested in the operation of the Clarksburg Company and received an option, never exercised, to purchase the assets of Clarksburg, other than raw materials, goods in process and finished products. (R. 131.)

Pursuant to that agreement, $70,000 was borrowed by the Clarksburg Glass Company from the Pittsburgh Plate Glass Company and was repaid to that company in 1925. Also, pursuant to that agreement, the Pittsburgh Plate Glass Company advanced to the Clarksburg Glass Company the sum of $100,000 in September 1924. This was secured by a second mortgage on the Clarksburg properties, and the indebtedness, as of January 1, 1926, was evidenced by three notes all dated June 30, 1925, two in the amounts of $20,000 and $30,000 respectively, due on or before January 1, 1926, and one in the amount of $50,000, due on

or before July 1, 1926. Of this indebtedness $70,000 was endorsed by W. M. B. Sine, president of Clarksburg, personally. (R. 131–132.)

Early in 1925, for reasons of urgent financial expediency, the stockholders of Clarksburg Glass Company and the stockholders of American Sheet Glass Company, another glass company operating in Clarksburg, undertook to effect a merger; and on February 9, 1925, the Clarksburg Flat Glass Company was organized under the laws of West Virginia to take over the properties of the two companies. Shortly thereafter, the Clarksburg Flat Glass Company entered into agreements with Clarksburg and the American Sheet Glass Company whereby Flat Glass obtained an option, to be exercised within six months, to acquire the respective properties in exchange for shares of its stock and the assumption of liabilities. By July 7, 1925, Flat Glass had realized approximately $200,000 from the sales of its stock which was expended in payment of obligations of the Clarksburg and American Companies. It had received notes of Clarksburg totaling $171,800. The contemplated merger was never completed, since the parties were unable to raise the necessary funds. Efforts to effect a merger between the companies continued without success until January of 1926. (R. 132–133.)

On January 1, 1926, Clarksburg defaulted in payment of its notes totaling $50,000 due Pittsburgh on or before that date. The additional

obligation in the face amount of $50,000 also became due as a result of an acceleration clause. On January 20, 1926, Pittsburgh instituted a suit in the District Court of the United States for the Northern District of West Virginia for the appointment of a receiver to foreclose its deed of trust. H. E. Davisson was appointed receiver by the court for the property and assets of Clarksburg Glass Company. He operated the company from January 22 to May 22, 1926, under the direction and supervision of W. M. B. Sine, president of the company. Sine recommended the appointment of H. E. Davisson as receiver. During this period, January 22 to May 20, 1926, Sine was negotiating to raise funds to retain the property and assets of the Clarksburg Glass Company. (R. 133–134.)

On February 9, 1926, at the annual meeting of the stockholders of Clarksburg Glass Company, the president reported the institution of the suit by Pittsburgh, and that the officers and directors had been unable to raise money sufficient to pay the debt and prevent foreclosure, and suggested that the stockholders subscribe funds sufficient to purchase the claim. Subscriptions having been solicited, it was found that sufficient funds could not be obtained at that meeting and a committee consisting of Sine and two others was appointed to arrange a general meeting of stockholders of Clarksburg Glass Company, Clarksburg Flat Glass

Company, and American Sheet Glass Company for the purpose of determining what action should be taken, and taking any feasible action, to protect the stockholders of Clarksburg Glass Company. On April 12, 1926, a committee for the stockholders of the Clarksburg Glass Company and the Clarksburg Flat Glass Company addressed to their stockholders a report in which it was stated that it was the opinion of the committee that the only practical way of protecting the investment made in the stock of those companies was for the stockholders to subscribe to the capital stock of a new corporation to be formed, which would attend the sale of the assets of the Clarksburg Glass Company when and if the sale was held, and to acquire the assets at the sale if they could be had at a price that would insure the subscribers an adequately capitalized business. (R. 134–135.)

On April 16, 1926, judgment was rendered in the equity suit in favor of Pittsburgh for the amount due and providing that in default of payment within five days the real and personal property of the Clarksburg Glass Company be sold in satisfaction of the lien debt to Pittsburgh Plate Glass Company and subject to the prior lien of the first mortgage. (R. 136.)

In April and May, 1926, the Pittsburgh Company wrote letters to Mr. Steptoe, their counsel, excerpts from which appear on pages 136–138 of the record. In these letters it is stated that if Sine and his associates could purchase the prop-

erty at the foreclosure sale, that would be satisfactory since Pittsburgh did not care to acquire the property and would only do so to protect its interests.

A sale was made of the property and assets of the Clarksburg Glass Company on May 20, 1926, by commissioners appointed for that purpose, to Pittsburgh for the sum of $100,000, and the sale was confirmed by the court on May 22, 1926. Neither Sine nor his associates bid on the property, although Sine was present at the sale. Pittsburgh received a deed dated May 26, 1926, which recited that the consideration for the transfer was the sum of $100,000 of which amount $33,500 was paid in cash on the day of sale, and the residue, evidenced by a note in the sum of $66,500 and bearing interest at 6 percent per annum, was to be paid on or before December 31, 1926. The $33,500 cash payment was from funds of Pittsburgh Plate Glass Company. The day before the receiver's sale, Sine deposited with the attorneys from Pittsburgh Plate Glass Company $33,500, to show good faith that he and his associates would be taking over the property, and subject to the final transaction being carried out. (R. 138–139.)

On June 3, 1926, the Pittsburgh Plate Glass Company wrote a letter to Sine, offering to sell

761868—47——2

the property and assets of the Clarksburg Glass Company on the following basis (R. 139–140):

> * * * that you pay to us the full amount of our claim against the Clarksburg Glass Company and repay or reimburse us for all payments, costs, expenses and all other "out of pocket" amounts arising from the foreclosure proceedings. This will be substantially as follows:
>
> You will repay to us the cash payment of $33,500, with interest, that we paid to the special commissioners appointed by the Court, plus the principal of $100,000 and accrued interest on notes due us of the Clarksburg Glass Company, and all of the costs of said suit, sale and receivership, including our counsel fees incurred therein and any deficit in the Receiver's account. You are further to pay all taxes accrued or to accrue against the property and the first mortgage note, with interest (amount $20,000), now past due.
>
> This offer must be accepted within thirty days from this date and $80,000 paid to us by you thereupon, and within thirty days after acceptance additional cash to reduce the total of your indebtedness to $66,666.66, for which we will accept your notes, with interest at six percent, to be secured by a mortgage on the property substantially in form and effect as the mortgage heretofore given us by the Clarksburg Glass Company.
>
> If this offer is not accepted within thirty days from date, it becomes null and void.

> If accepted, other details and more exact figures will be compiled immediately together with necessary adjustments.

On June 15, 1926, Sine wrote a letter to the Pittsburgh Plate Glass Company, accepting the offer of June 3, 1926. Such acceptance was made on behalf of Adamston Flat Glass Company,[1] the taxpayer herein. (R. 140.)

On June 18, 1926, the Adamston Flat Glass Company, the taxpayer herein, was chartered. The authorized capital stock of the taxpayer was $200,000, divided into 2,000 shares of par value of $100 each. (R. 140.)

On June 29, 1926, settlement was effected between Pittsburgh and taxpayer, under the terms of which Pittsburgh received the sum of $153,-969.85, which consisted of the sum of $87,303.19 in cash and two notes of $33,333.33 each, payable in one and two years respectively. A deed conveying the property to the taxpayer was executed. (R. 141–142.)

On September 15, 1926, 1,500 shares of capital stock of Adamston Flat Glass Company were issued to 43 stockholders. The stockholders acquired their stock by purchase. Of the 79 stockholders of Clarksburg Glass Company only 10 subscribed for 729 shares of the 1,500 shares of stock of Adamston Flat Glass Company. J. H.

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[1] The prospective new company had been given that name about April 1926.

Fox, trustee for Pittsburgh Plate Glass Company, owned 4,257 shares of stock of Clarksburg Glass Company, but no stock of Adamston Flat Glass Company was subscribed for, purchased, or acquired by, or in trust for Pittsburgh Plate Glass Company. (R. 143.)[2]

On January 20, 1926, the total outstanding capital stock of Clarksburg Glass Company consisted of 18,215 voting and 3,061 nonvoting shares. Of the outstanding capital stock 9,663 shares of voting and 2,482 shares of nonvoting stock were held by persons who were not stockholders of Adamston Flat Glass Company. (R. 143.)

A list of stockholders of Adamston Flat Glass Company who held stock in Clarksburg Glass Company is shown on page 143 of the record.[3]

A list of those direct creditors of Clarksburg who subscribed for the stock of Adamston and became stockholders follows (R. 143):

Name:	*Shares subscribed for and issued*
W. M. B. Sine	507
H. B. Curtin	300
Total	807

[2] Subsequent to the argument in the Circuit Court of Appeals, taxpayer contended for the first time in a memorandum filed with the court that the above finding is incorrect and that twelve stockholders of Clarksburg acquired 754 shares of taxpayer's stock. (See R. 161; Pet. 8.)

[3] Taxpayer now contends that this finding is inaccurate. See footnote 2, *supra*.

Sine also was endorser on $70,000 in notes in default to Pittsburgh Plate Glass Company. (R. 144.)

A list of the stockholders of Flat Glass, the largest unsecured creditor of Clarksburg, who subscribed for the stock of Adamston, and became stockholders, and the number of shares so subscribed and issued, is set out on page 144 of the record.

A list of the stockholders and creditors of Clarksburg who subscribed for the stock of Adamston is set out on page 145 of the record.[4]

The total number of shares of Adamston stock subscribed for and issued originally was 1,500. (R. 145.)

Books and records were opened on June 29, 1926, for what the bookkeeper considered the Adamston Flat Glass Company, as of May 22, 1926. The books contained reference to notes dated June 29, 1926. From May 22 to June 28, 1926, W. M. B. Sine operated the plant under authority from Pittsburgh. (R. 145.)

The Tax Court sustained the Commissioner's determination and held that in computing its income taxes for the years 1940, 1941, and 1942, the taxpayer can not use the Clarksburg Glass Company's basis for depreciation. (R. 150.) The Circuit Court of Appeals affirmed. (R. 166.)

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[4] Taxpayer now contends this list should be corrected to include one more stockholder. See footnote 2, *supra*.

ARGUMENT

Sections 113 and 114 of the Internal Revenue Code (Appendix, *infra*), read together, provide that the basis for depreciation shall be the cost of the property with certain exceptions. One of the exceptions is found in Section 113 (a) (7) (A), and is to the effect that if the property was acquired after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a "reorganization," and immediately after the transfer an interest or control in such property of 50 percent or more remained in the same persons or any of them, then the basis shall be the same as it would be in the hands of the transferor.

Section 203 (h) of the Revenue Act of 1926 (Appendix, *infra*), applicable to the transactions here involved, provides in part that the term "reorganization" means "a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation) * * *."

Therefore, in order to use the Clarksburg Glass Company's basis for depreciation, the taxpayer must show both that there was a "reorganization" and that immediately after the transfer the requisite interest or control remained in the same

persons or any of them. The Tax Court assumed, without deciding, that the 50 percent interest or control requirement was satisfied, but decided the case against the taxpayer on the ground that there was no reorganization. (See R. 147.) The Circuit Court of Appeals concluded that there was a reorganization but nevertheless sustained the Tax Court's decision because the transfer did not meet the 50 percent interest or control requirement. We submit that both courts reached the correct result and that there is no adequate basis for certiorari.

A. THE REQUISITE INTEREST OR CONTROL WAS LACKING

Since the taxpayer bases its application for certiorari solely upon the question with respect to the 50 percent interest or control provision of the statute, and that was the point as to which the Circuit Court of Appeals sustained the Tax Court's decision, we will discuss it first. It is our view that the statutory language "remained in the same persons or any of them" is satisfied only if the holders of a 50 percent interest or control in the new corporation acquired that interest or control by virtue of their possession of a 50 percent interest or control in the old corporation. It is not necessary that everybody in the controlling group prior to the transfer participate in it, and the percentages of interest or control after the transfer may be different from what they

were before it, but it is essential to the operation of the statute that persons who collectively had the minimum interest or control immediately prior to the transfer continue collectively to have it thereafter. To this effect, see G. C. M. 7472, IX-1 Cum. Bull. 184, 191-192 (1930); I. T. 2662, XI-2 Cum. Bull. 41, 42-43 (1932); *Monarch Electric & Wire Co.* v. *Commissioner,* 38 F. 2d 417 (C. C. A. 7); *Fairbanks Court W. Groc. Co.* v. *Commissioner,* 84 F. 2d 18 (C. C. A. 7), certiorari denied, 299 U. S. 582; *Rex Mfg. Co.* v. *Commissioner,* 102 F. 2d 325 (C. C. A. 7); *Republic Steel Corp.* v. *United States,* 40 F. Supp. 1017 (C. Cls.).

And if that be so, then clearly there is absent in this case the requisite carry-over of the minimum interest or control and the Circuit Court of Appeals below correctly so held, pointing out (R. 161) that neither the creditors nor the shareholders separately considered held a 50 percent interest before the transfer, and that the two classes may not be combined for the purposes of the statute.

The Circuit Court of Appeals took the view that in the circumstances of this case the stockholders were the real proprietors of the old company and they alone should be considered in determining the question. In the petition for certiorari the taxpayer accepts that view (Pet. 8), and urges (Pet. 10, 14-19, 20, 22, 25-26) that the decision of the Circuit Court of Appeals here is in conflict with *Muskegon Motor Specialties Co.* v. *Commis-*

sioner, 134 F. 2d 904 (C. C. A. 6), certiorari denied, 320 U. S. 741. We submit that taxpayer is wrong and that there is no conflict between the decisions. In the *Muskegon* case the court was concerned with the peculiar situation arising where a new company acquires the assets of two transferor companies. In that case all of the stockholders of one of the transferor companies, Muskegon Michigan, participated in the reorganization, and they emerged as the holders of 60 percent of the issued (40 percent of the authorized) common stock of the new company. As to the other transferor company, the Gordon Company, it appears that one Gordon and wife owned 28 percent of its stock and he had options on the balance. Gordon and wife participated in the reorganization and acquired over 25 percent of the issued (18⅔ percent of the authorized) common stock of the new company. Gordon assigned his options to the new company which acquired for cash the shares covered by the options. After the stock of the two old companies had been thus acquired, the new company took over their assets. The cost of the depreciable assets acquired from Muskegon Michigan was about $490,000 and the cost of those acquired from the Gordon Company was $364,000. The new company claimed that it was entitled to use this cost as the basis for depreciation, but the Commissioner determined that it must use the basis of its predecessors and

the Board of Tax Appeals upheld the Commissioner. Upon appeal by the taxpayer, the Circuit Court of Appeals concluded (pp. 907–908) that the 50 percent interest or control requirement of the statute was satisfied because the transferor stockholders collectively held more than 50 percent of the authorized common stock of the new corporation after the transfer. In so holding the court cited the decision of the Seventh Circuit in the *Fairbanks* case, *supra*. It is true that the court does say that it matters not that all of the stockholders of the old corporations did not become common stockholders of the taxpayer, and that if any who were stockholders in Gordon plus any who were stockholders in Muskegon Michigan immediately after the transfer collectively controlled 50 percent of taxpayer, the statute is met. But that language must be viewed in the light of the facts which show that the participating stockholders, collectively considered, had an interest of more than 50 percent in the combined properties of the two transferor corporations.

The taxpayer in the instant case says (Pet. 15) that the Circuit Court of Appeals below recognized a conflict between its decision and the *Muskegon* case. We do not think that this is so. True, the court did say (R. 164) that in the *Muskegon* case a majority interest in one of the two transferring corporations was seemingly not preserved in the transferee, but that remark does not indicate

that the court would have reached a conclusion different from the Sixth Circuit in the ***Muskegon*** case if the peculiar facts of that case had been before it. There is a material difference between a case like the instant one where there was only one transferor corporation and a case like ***Muskegon*** where there were two. Certainly the opinion of the Fourth Circuit in the instant case is not at variance with the view of the court in the *Muskegon* case when considered in the light of the actual facts presented.

The applicable authorities are thoroughly considered by the Circuit Court of Appeals in its opinion (R. 164–166) and its conclusion that in circumstances such as here presented the statutory requirement has not been satisfied is amply supported by them.

B. THERE WAS NO REORGANIZATION

In addition to the foregoing, we submit that there was no reorganization in this case; that the Tax Court correctly so held, and to the extent that the opinion of the Circuit Court of Appeals is at variance with this, it is wrong. The Tax Court thought (R. 147) that there was not sufficient continuity between the equity ownership of the old and new companies to justify the claim of reorganization. Here the old company was con-

cededly insolvent[5] and in the hands of an equity receiver, and there was apparently nothing left for the stockholders; and since the secured creditors were accorded full priority, it would seem that the unsecured creditors should be treated as the equity owners. *Helvering* v. *Limestone Co.,* 315 U. S. 179; *Montgomery Building Realty Co.* v. *Commissioner,* 7 T. C. 417 (Commissioner's Acquiescence, 1946–2 Cum. Bull. 4). The Tax Court pointed out that only the holders of a relatively insignificant amount of the total claims against the old company emerged as stockholders of the new, and held that this was not enough to satisfy the continuity of interest test as to a reorganization. *Pinellas Ice Co.* v. *Commissioner,* 287 U. S. 462; *Helvering* v. *Limestone Co., supra.*

Moreover, there was a receiver's sale of the old company's assets to the Pittsburgh Company, and the Tax Court thought that this left Pittsburgh in the position of an independent owner and effectively broke any continuity that might otherwise have existed. *Bondholders Committee* v. *Commissioner,* 315 U. S. 189, 192–193; *Cushman Motor Works* v. *Commissioner,* 130 F. 2d 977, 981 (C. C. A. 8), certiorari denied, 318 U. S. 756. The Tax Court's conclusion that the transfer to Pittsburgh was not merely a step in a reorgani-

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[5] The taxpayer so conceded in the Circuit Court of Appeals, and both of the courts below assumed that the old company was insolvent. (R. 162.)

zation, and that Pittsburgh should be treated as an independent owner, seems neither arbitrary nor unreasonable and it is supported by the evidence which is summarized in the opinion. (R. 149.) Accordingly, it should have been accepted by the Circuit Court of Appeals (*Dobson* v. *Commissioner,* 320 U. S. 489; *Bedford* v. *Commissioner,* 150 F. 2d 341, 343 (C. C. A. 2); *Heller* v. *Commissioner,* 147 F. 2d 376, 378 (C. C. A. 9), certiorari denied, 325 U. S. 868), even though reasonable men might differ as to the factual inferences and conclusions to be drawn from the evidence. *Commissioner* v. *Scottish American Co.,* 323 U. S. 119, 123–124.

Finally, it will be noted that as pointed out in the Tax Court's opinion (R. 147), there was no exchange in the instant case and all of the stock of the new company was issued for cash. This certainly indicates that the old company was closed out as a losing venture and the new company was financed through fresh investment so that there was not a reorganization in any real sense. *Helvering* v. *Cement Investors,* 316 U. S. 527, 533.

In the circumstances, we submit that the Circuit Court of Appeals and the Tax Court both reached the right result in the instant case, and there is no occasion for any further review.

CONCLUSION

The decision is correct; there is no conflict; and the petition should be denied.

Respectfully submitted.

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SEPTEMBER, 1947.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 203.

* * * * *

(h) As used in this section and sections 201 and 204—

(1) The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(i) As used in this section the term "control" means the ownership of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

Internal Revenue Code:

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except that—

* * * * *

(7) *Transfers to Corporation.*—If the property was acquired—

(A) after December 31, 1917, and in a taxable year beginning before January 1, 1936, by a corporation in connection with a reorganization, and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, * * * then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. * * *

(b) *Adjusted Basis.*—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinbefore provided.

* * * * *

(26 U. S. C. 1940 ed., Sec. 113.)

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose

of determining the gain upon the sale or other disposition of such property.

*   *   *   *   *

(26 U. S. C. 1940 ed., Sec. 114.)

Treasury Regulations 69, promulgated under the Revenue Act of 1926:

> ART. 1577. *Definitions.*—The term "reorganization," as used in sections 201, 203, and 204 means—
>
> (1) A merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation, or substantially all the properties of another corporation),
>
> (2) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred,
>
> (3) A recapitalization, or
>
> (4) A mere change in identity, form, or place of organization, however effected.
>
> The term "a party to a reorganization" as used in sections 201, 203, and 204 includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation. This definition is not an all-inclusive one, but simply enumerates certain cases with respect to which doubt might arise.
>
> A person is, or two or more persons are, "in control" of a corporation, within the meaning of section 203, when owning—

(1) At least 80 percent of the voting stock, and

(2) At least 80 percent of the total number of shares of all other classes of stock of the corporation.

As used in section 203, as well as in other provisions of the statute, the conjunction "or" is used to denote both the conjunctive and the disjunctive, and the singular is used to include the plural. For example, the provisions of article 1574 are complied with if "stock and securities" are received in exchange as well as if "stock or securities" are received, and if securities in the same corporation, together with securities in another corporation a party to the reorganization or in other corporations parties to the reorganization, are received in exchange.

Treasury Regulations 111, promulgated under the Internal Revenue Code:[1]

SEC. 29.113 (a) (7)-1. *Property Acquired by Corporation in Reorganization after December 31, 1917.*—Section 113 (a) (7) sets forth the conditions under which the basis of property acquired by a corporation after December 31, 1917, in connection with a reorganization as defined in section 112 is the same as it would be in the hands of the transferor, increased or decreased as therein provided in the amount of gain or loss recognized to the transferor under the applicable revenue law. In the case of

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[1] Treasury Regulations 111 are applicable only to years beginning after December 31, 1941. Treasury Regulations 103, also promulgated under the Internal Revenue Code, are applicable to earlier years beginning after December 31, 1938. Sections 19.113 (a) (7)-1, 19.113 (b) (1)-1, and 19.114-1, do not differ from the corresponding provisions of Treasury Regulations 111, above quoted, in any material respect.

property so acquired in a taxable year beginning prior to January 1, 1936, such basis is applicable only if immediately after the transfer there remained in the same persons or any of them an interest or control in such property of 50 percent or more. * * *

* * * * *

SEC. 29.113 (b) (1)-1. *Adjusted Basis: General Rule.*—The adjusted basis for determining the gain or loss from the sale or other disposition of property is the cost of such property or, in the case of such property as is described in section 113 (a) (1) to (21), inclusive, the basis therein provided, adjusted to the extent provided in section 113 (b).

The cost or other basis shall be properly adjusted for any expenditure, receipt, loss or other item, properly chargeable to capital account, including the cost of improvements and betterments made to the property. * * *

* * * * *

SEC. 29.114-1. *Basis for Allowance of Depreciation and Depletion.*—The basis upon which exhaustion, wear and tear, obsolescence, and depletion will be allowed in respect of any property is the same as is provided in section 113 (a), adjusted as provided in section 113 (b), for the purpose of determining the gain from the sale or other disposition of such property, * * *

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